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| APPLICATION NO.                    | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/784,787                         | 02/15/2001  | Jonathan S. Turner   | 55491               | 3031             |
| 26327                              | 7590        | 06/28/2005           | EXAMINER            |                  |
| THE LAW OFFICE OF KIRK D. WILLIAMS |             |                      | PATEL, AJIT         |                  |
| 1234 S. OGDEN ST.                  |             |                      | ART UNIT            |                  |
| DENVER, CO 80210                   |             |                      | PAPER NUMBER        |                  |

2664

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/784,787

Applicant(s)

TURNER ET AL.

Examiner

AJIT G. PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-24 is/are rejected.
- 7) ☒ Claim(s) 3-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5 pages</u> . | 6) <input type="checkbox"/> Other: _____  |

1. Claim 1 is objected to because of the following informalities: In line 7, "one or more" should be changed to -- each--. Appropriate correction is required.

Claim 13 is objected to because of the following informalities: In line 4, after the "second component", "each of the second components" should be inserted; In line 4, after "connected to", "each of" should be inserted; In line 6, after "from", "one or more" should be changed to --each--. Appropriate correction is required.

2. Claims 18-21 are rejected under 35 U.S.C. 112; first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "non-flow control".

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1,2,7-17,22-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-23 of U.S. Patent No. 6,735,173. Although the conflicting claims are not identical, they are not patentably distinct from each other because information of a volume of traffic and the condition of traffic recited in claim 1 and 13 respectively is the same as the flow control information recited in claim 20. The following is the comparison between the claims in the instant application and the claims in the issued patent. Each of a plurality of first elements of a packet switching system is the same as a plurality of first switch elements; a second elements of the packet switching system is the same as a plurality of second switch elements; the second element receiving the transmitted indication (information) from each of the plurality of first element is the same as said each of the plurality of second switch element configured to receive the accumulated information from each of the plurality of first switch elements; the second element manipulating the received indication (information) to determine a set of traffic condition is the same as to generate an accumulated second set of flow control information.

Regarding claim 2, the first and second elements include switching elements of the packet switching system is the same as a packet switch including a plurality of first and second elements.

Regarding claim 7, the set of traffic conditions includes a destination traffic indication for each destination connected to the second element is the same as distribute the accumulated second set of flow control information to the interface.

Regarding claim 8, a routing stage of the packet switching system includes each of the plurality of the first elements is inherent in the switching system.

Regarding claim 9, a final switching stage of the packet switching system includes the second element is obvious since it depends on the system in which second element can be a final stage.

Regarding claim 10, the second element distributing an indication of a traffic condition from the determined set of traffic conditions which is inherent in the system.

Regarding claim 11, the determined set of traffic conditions are distributed to one or more components within the packet switching system providing traffic to a switching fabric of the packet switching system, see claim 1.

Regarding claim 12, the determined set of traffic conditions are distributed to one or more components external to the packet switching system (the traffic condition is sent to the users which is external to the switching system).

Regarding claim 22, the statistical information representing the volume of traffic is inherent in the flow control information.

Regarding claims 23,24, the flow control information is always contains packet counts.

5. Claims 18-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13 of U.S. Patent No. 6,654,342. Although the conflicting claims are not identical, they are not patentably distinct from each other because traffic information and flow control data structure are

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interrelated to each other. The following are the comparison. A first switching element is the same as a first switch element; means for forwarding indications of the traffic information from the first switching element to a second switching element is the same as a plurality of communication mechanisms transferring a plurality of flow control data structure update messages between the first and second switch elements; means for distributing from the second switching element to a third element of the packet switching system one or more control indications based on the accumulated traffic information is the same as a plurality of non-flow control messages containing flow control information between second and the third switch elements.

Regarding claims 19, 20, the final switching stage of the packet switching system or switching fabric of the packet switching system includes the second switching element is obvious to one skilled in the art since it depends which switching element in the system is considered as a final stage.

Regarding claim 21, packet count is always used for the flow control traffic information.

6. Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AJIT G. PATEL whose telephone number is 571-272-3140. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AP

  
**Ajit Patel**  
**Primary Examiner**